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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Sylvain Dal

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YOUNG & THOMPSON
209 Madison Street
Suite 500
ALEXANDRIA, VA 22314

EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,663	Applicant(s) DAL ET AL.	
	Examiner Brent T. O'Hern	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Claims 7-19 are pending with claims 13-19 new.

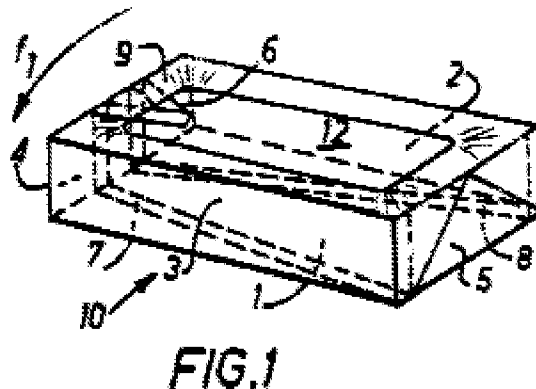
REPEATED REJECTIONS

2. All rejections of record in the Office action mailed 14 October 2008, pages 2-6 are repeated for the reasons of record. These rejections are copied and incorporated below with the other substantially similar claims/rejections.

Claim Rejections - 35 USC § 103

3. Claims 7-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2.198.469 in view of FR 2,499,025 and Layne (US 3,547,768).

French publication ('469) teaches a leakproof package in the form of a rectangular parallelepiped (See FIGs 1-4 and p. 2, ll. 1-4.)



suitable for rapid opening by tearing and for containing a semisolid product that is capable of being put in a semiliquid state, in particular cheese (See p. 2, ll. 1-5.), a first sheet cut out to an appropriate outline and shaped into a rectangular shell for receiving

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the product, and so as to present a pull corner for opening the package, and sealed

(See FIGs 1-4, package with pull corner #6 for package #10.),

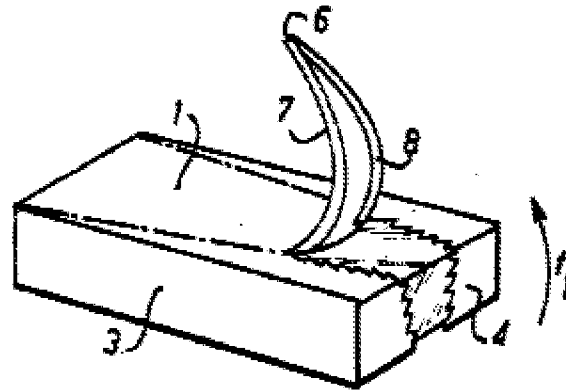


FIG. 2

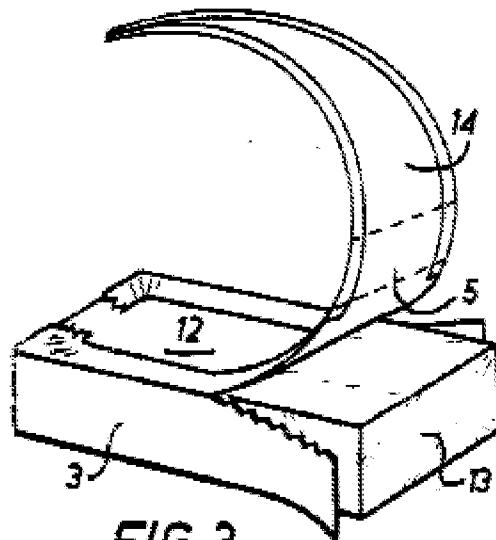
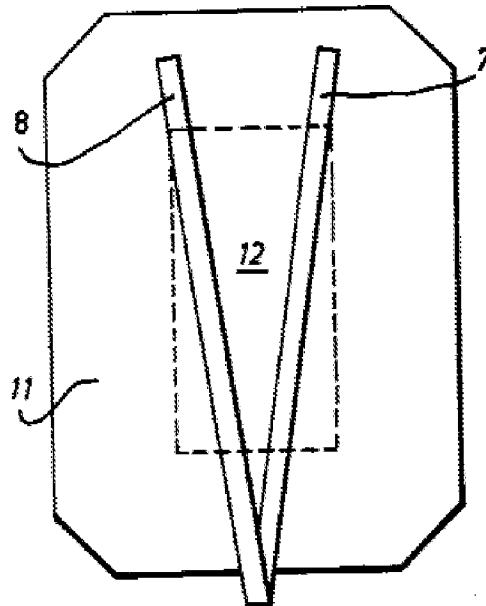


FIG. 3

while leaving the pull corner free, and two tear strips disposed on and secured to the first sheet and folded along with the folds in the container (See FIGs 1-4, free pull corner #6 with tear strips #7 and #8.), so as to be entrained when the pull corner is pulled, wherein the free pull corner is formed by a triangular projection formed on one of

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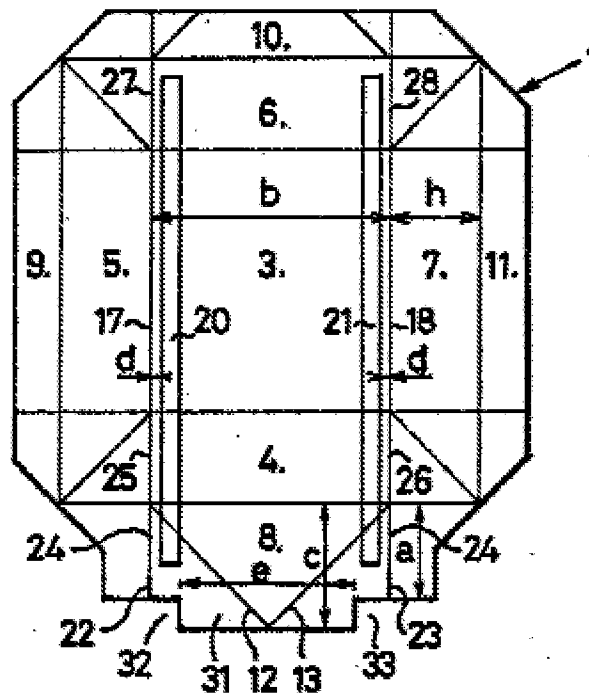
the sides of the first sheet cut out into an octagonal shape (See FIGs 2-4, *triangular projection on the side with octagonal shape as illustrated in FIG-4.*),

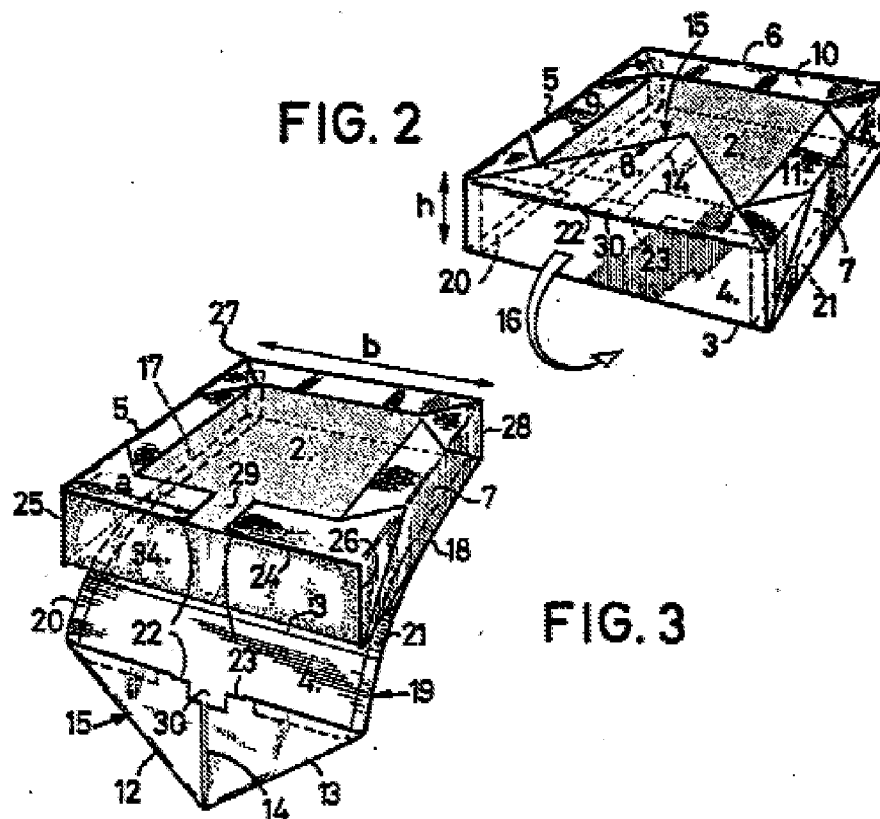
**FIG.4**

and wherein the tear strips form a generally pointed U-shape with the tip thereof being situated in said triangular projection (See FIGs 1-4, *generally U-shaped strips #7 and #8. Note that Applicant's claims as supported by the Specification do not claim or have support for a U-shaped structure but rather a structure that has a shape similar to a U.*), wherein the tear strips are situated inside the shell and extend along two sides of the bottom of the shell (See FIGs 1-4, *tear strips #7 and #8 inside shell.*), however, fails to expressly disclose one or more sheets of polypropylene with a second sheet cut to at least the dimensions of the bottom of the shell and for placing flat on the product with the side faces of the shell being folded down thereon, and heat-sealed, while leaving the pull corner free.

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French publication ('025) teaches a cheese package made of multiple pieces of folded packaging material #3 and #2 with tear strips #20 and #18 for the purpose of providing a barrier for the cheese and a means for opening (See FIGs 1-3 and entire document.).

FIG. 1



Layne ('768) teaches using a polypropylene barrier material for heat sealed cheese packages for the purpose of protecting the packaged cheese (*See col. 1, ll. 14-65 and col. 2, ll. 25-47.*).

Regarding the tear starters, cuts and the shape of the applied tear strips, it appears from the figures of ('469) that tear starters with cuts are provided otherwise when the package is opened the film would not tear with the uniform jagged profile. Furthermore, ('025) appears to have tear cuts which allow for uniform tearing as illustrated in the figures. Regarding the shape of the applied strips, it would have been obvious as a matter of routine design choice to vary the orientation depending on the shape of the package and what is effective and/or pleasing to the consumers. In the

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alternative it would have been obvious to provide the package with such to aid in opening the package.

The phrases “adapted to ****” in claim 13, lines 24 do not limit the claims to a particular structure (*See MPEP 2111.04.*).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant’s invention was made to use multiple sheets of packaging material, such as polypropylene with the above orientation and opening features, as taught by French publication (‘025) and Layne (‘768) in French publication (‘469) in order to provide an effective barrier for packaged cheese.

ANSWERS TO APPLICANT’S ARGUMENTS

4. In response to Applicant’s arguments (*p. 9, para. 4 of Applicant’s Paper filed 14 January 2009*) that the two French references do not teach a polypropylene packaging material, a triangular projection and the tear strip situated in a triangular projection, it is firstly noted the Examiner concurs regarding the polypropylene material, however, Layne (‘768) is cited for teaching polypropylene for cheese packaging materials. The FR (‘469) reference clearly teaches the triangular projection with the strips within the projection as illustrated in FIGs 1-4. Furthermore, Applicant’s shape is not U-shaped but rather in a shape similar to a U.

5. In response to Applicant’s arguments (*p. 10, paras. 1-2 of Applicant’s Paper filed 14 January 2009*) that Layne (‘768) does not teach using polypropylene packaging material for a cheese package because the shapes of Layne (‘768) are different than what is claimed and there is not any motivation to replace aluminum by polypropylene, it

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is firstly noted that Layne ('768) is not cited for the shapes of the packaging material but rather the composition. It is undisputable that Layne ('768) teaches using polypropylene for packaging cheese. Furthermore, the Examiner does not suggest using polypropylene to replace aluminum but rather using polypropylene as an additional packaging layer as taught by FR '025.

6. In response to Applicant's arguments (*p. 10, para. 3 to p. 12, para. 2 of Applicant's Paper filed 14 January 2009*) regarding how the tear strips in FR '025 are different than what is claimed, thus, there is not a reasonable expectation of success of arriving at the claimed package, it is noted said arguments are not relevant to why FR '025 is cited as prior art. Applicant does not address the cited teachings of FR '025. FR '025 is cited for teaching a cheese package having multiple pieces of material and not for the strips. It is FR '469 that is cited for the strips.

7. No further precise arguments are presented than discussed above.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BTO/
Brent T. O'Hern
Examiner
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March 7, 2009

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/Elizabeth M. Cole/

Primary Examiner, Art Unit 1794